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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,520	06/26/2003	John N. Gregg	ATMI-651	5741

7590 06/02/2004

Advanced Technology Materials, Inc.
7 Commerce Drive
Danbury, CT 06810

EXAMINER

DEVORE, PETER T

ART UNIT PAPER NUMBER

3751

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,520

Applicant(s)

GREGG ET AL.

Examiner

Peter T deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/6/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-7, 9, and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Jourdan.

The Jourdan reference discloses a canister guard which is inherently capable of preventing liquid chemical exiting as claimed and which comprises baffles 25 with baffle inlets 24, a sealed bottom (see face having the smallest area shown in Figure 4), and a lip 18 capable of removable securement over a canister outlet as claimed. Regarding claims 14, note "canister" 2 in Figure 1.

Claims 1, 2, 4-7, 9, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakayama.

The Jourdan reference discloses a canister guard which is inherently capable of preventing liquid chemical exiting as claimed and which comprises baffles 1 and lower inlet 23.

Claims 1, 2, 4, 14, 15, 18-21, and 23-26 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Birtcher.

The Birtcher reference discloses a canister 10, a canister guard comprising baffle 84, and reactor 28. Note that the claimed method is inherently performed during the normal use of the Birtcher device.

Claims 1, 2, 4, 14, 15, and 17-26 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Gregg. The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The Gregg reference discloses a canister 300 having canister guard 203, sidewall inlets 205, and sensor 110. Note that the claimed method is inherently performed during the normal use of the Gregg device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jourdan.

The Jourdan reference discloses a canister guard as discussed supra, but remains silent as to the material and dimensions of the canister guard. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Jourdan device out of stainless steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In *Re Leshin*, 125 USPQ 416, and to make the device having the claimed dimensions, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In *re Aller*, 105 USPQ 2336.

Claims 3, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama.

The Nakayama reference discloses a canister guard as discussed supra, but remains silent as to the material and dimensions of the canister guard. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Nakayama device out of stainless steel, since it has been held to be within the

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In *Re Leshin*, 125 USPQ 416, and to make the device having the claimed dimensions, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In *re Aller*, 105 USPQ 2336.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Nakayama reference discloses a baffle arrangement similar to that disclosed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T DeVore whose telephone number is (703) 306-5481. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd

A handwritten signature in black ink, appearing to read "Gregory L. Huson", written in a cursive style.

GREGORY L. HUSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700